

§970.7

official or the legally designated official, who has the primary responsibility for the conduct of that entity's governmental affairs. Examples of the chief executive officer of a unit of general local government are: the elected mayor of a municipality; the elected county executive of a county; the chairperson of a county commission or board in a county that has no elected county executive; and the official designated pursuant to law by the governing body of a unit of general local government.

Demolition means the removal by razing or other means, in whole or in part, of one or more permanent buildings of a public housing development. A demolition involves any four or more of the following:

- (1) Envelope removal (roof, windows, exterior walls);
- (2) Kitchen removal;
- (3) Bathroom removal;
- (4) Electrical system removal (unit service panels and distribution circuits); or
- (5) Plumbing system removal (e.g., either the hot water heater or distribution piping in the unit, or both).

Disposition means the conveyance or other transfer by the PHA, by sale or other transaction, of any interest in the real estate of a public housing development, subject to the exceptions stated in §970.3.

DOFA, or date of full availability, means the last day of the month in which substantially all (95 percent or more) of the units in a housing development are available for occupancy.

Firm financial commitment means a commitment that obligates a creditable source, lender, or equity provider, to the lending or equity investment of a specific sum of funds to be made on or before a specific date(s) and may contain contingencies or conditions that must be satisfied by the borrower (or entity receiving equity investments) before the closing of the transaction. The condition of a firm commitment must be that it is enforceable by the borrower (or entity receiving the equity investment) upon the satisfaction of all contingencies or conditions.

PHA Plan—Means the PHA's initial, annual, and 5-year submissions under

24 CFR Ch. IX (4–1–10 Edition)

section 5A of the U.S. Housing Act of 1937, 42 U.S.C. 1437c-1.

Resident Advisory Board (RAB) has the same meaning as in §903.13(a) of this title.

Resident Council means a resident organization, the role and requirements of which are as described in 24 CFR part 964.

Total development cost has the same meaning as in 24 CFR 941.103.

§970.7 General requirements for HUD approval of a PHA demolition/disposition application.

(a) *Application for HUD Approval.* A PHA must obtain written approval from HUD before undertaking any transaction involving demolition or disposition of PHA-owned property under the ACC. Where a PHA demolishes or disposes of public housing property without HUD approval, no HUD funds may be used to fund the costs of demolition or disposition or reimburse the PHA for those costs. HUD will approve an application for demolition or disposition upon the PHA's submission of an application with the required certifications and the supporting information required by this section and §§970.15 or 970.17. Section 970.29 specifies criteria for disapproval of an application. Approval of the application under this part does not imply approval of a request for additional funding, which the PHA must make separately under a program that makes available funding for this purpose. The PHA shall submit the application for demolition or disposition and the timetable in a time and manner and in a form prescribed by HUD. The supporting information shall include:

(1) A certification that the PHA has described the demolition or disposition in the PHA Annual Plan and timetable under 24 CFR part 903 (except in the case of small or high-performing PHAs eligible for streamlined annual plan treatment), and that the description in the PHA Annual Plan is identical to the application submitted pursuant to this part and otherwise complies with section 18 of the Act (42 U.S.C. 1437p) and this part;

(2) A description of all identifiable property, by development, including

land, dwelling units, and other improvements, involved in the proposed demolition or disposition;

(3) A description of the specific action proposed, such as:

(i) Demolition, disposition, or demolition with disposition;

(ii) If disposition is involved, the method of sale;

(4) A general timetable for the proposed action(s), including the initial contract for demolition, the actual demolition, and, if applicable, the closing of sale or other form of disposition;

(5) A statement justifying the proposed demolition or disposition under the applicable criteria of §§970.15 or 970.17;

(6) If applicable, a plan for the relocation of tenants who would be displaced by the proposed demolition or disposition (including persons with disabilities requiring reasonable accommodations and a relocation timetable as prescribed in §970.21);

(7) A description with supporting evidence of the PHA's consultations with residents, any resident organizations, and the Resident Advisory Board, as required under §903.9 of this title;

(8) In the case of disposition only, evidence of compliance with the offering to resident organizations, as required under §970.9;

(9) In the case of disposition, an estimate of the fair market value of the property, established on the basis of one independent appraisal, unless otherwise determined by HUD, as described in §970.19(c);

(10) In the case of disposition, estimates of the gross and net proceeds to be realized, with an itemization of estimated costs to be paid out of gross proceeds and the proposed use of any net proceeds in accordance with §970.19;

(11) An estimate of costs for any required relocation housing, moving costs, and counseling.

(12) Where the PHA is requesting a waiver of the requirement for the application of proceeds for repayment of outstanding debt, the PHA must request such a waiver in its application, along with a description of the proposed use of the proceeds;

(13) A copy of a resolution by the PHA's Board of Commissioners approving the specific demolition or disposition

application (or, in the case of the report required under §970.27(e) for "de minimis" demolitions, the Board of Commissioner's resolution approving the "de minimis" action) for that development or developments or portions thereof. The resolution must be signed and dated after all resident and local government consultation has been completed;

(14) Evidence that the application was developed in consultation with appropriate government officials as defined in §970.5, including:

(i) A description of the process of consultation with local government officials, which summarizes dates, meetings, and issues raised by the local government officials and the PHA's responses to those issues;

(ii) A signed and dated letter in support of the application from the chief executive officer of the unit of local government that demonstrates that the PHA has consulted with the appropriate local government officials on the proposed demolition or disposition;

(iii) Where the local government consistently fails to respond to the PHA's attempts at consultation, including letters, requests for meetings, public notices, and other reasonable efforts, documentation of those attempts;

(iv) Where the PHA covers multiple jurisdictions (such as a regional housing authority), the PHA must meet these requirements for each of the jurisdictions where the PHA is proposing demolition or disposition of PHA property;

(15) An approved environmental review of the proposed demolition or disposition in accordance with 24 CFR parts 50 or 58 for any demolition or disposition of public housing property covered under this part, as required under 24 CFR 970.13;

(16) A certification that the demolition or disposition application does not violate any remedial civil rights order or agreement, voluntary compliance agreement, final judgment, consent decree, settlement agreement, or other court order or agreement;

(17) Any additional information necessary to support the application and assist HUD in making determinations under this part.

(b) *Completion of demolition/disposition or rescissions of approval.* (1) HUD will consider a PHA's request to rescind an earlier approval to demolish or dispose of public housing property, where a PHA submits a resolution from the Board of Commissioners and submits documentation that the conditions that originally led to the request for demolition or disposition have significantly changed or been removed.

(2) The Assistant Secretary will not approve any request by the PHA to either substitute units or add units to those originally included in the approved demolition or disposition application, unless the PHA submits a new application for those units that meet the requirements of this part.

§ 970.9 Resident participation—consultation and opportunity to purchase.

(a) *Resident consultation.* PHAs must consult with residents who will be affected by the proposed action with respect to all demolition or disposition applications. The PHA must provide with its application evidence that the application was developed in consultation with residents who will be affected by the proposed action, any resident organizations for the development, PHA-wide resident organizations that will be affected by the demolition or disposition, and the Resident Advisory Board (RAB). The PHA must also submit copies of any written comments submitted to the PHA and any evaluation that the PHA has made of the comments.

(b) *Resident organization offer to sell—applicability.* In the situation where the PHA applies to dispose of a development or portion of a development:

(1) The PHA shall, in appropriate circumstances as determined by the Assistant Secretary, initially offer the property proposed for disposition to any eligible resident organization, eligible resident management corporation as defined in 24 CFR part 964, or to a nonprofit organization acting on behalf of the residents at any development proposed for disposition, if the resident entity has expressed an interest in purchasing the property for continued use as low-income housing. The entity must make the request in writing to

the PHA, no later than 30 days after the resident entity has received the notification of sale from the PHA;

(2) If the resident entity has expressed an interest in purchasing the property for continued use as low-income housing, the entity, in order for its purchase offer to be considered, must:

(i) In the case of a nonprofit organization, be acting on behalf of the residents of the development; and

(ii) Demonstrate that it has obtained a firm commitment for the necessary financing within 60 days of serving its written notice of interest under paragraph (b)(1) of this section.

(3) The requirements of this section do not apply to the following cases, which have been determined not to present an appropriate opportunity for purchase by a resident organization:

(i) A unit of state or local government requests to acquire vacant land that is less than two acres in order to build or expand its public services (a local government wishes to use the land to build or establish a police substation); or

(ii) A PHA seeks disposition outside the public housing program to privately finance or otherwise develop a facility to benefit low-income families (e.g., day care center, administrative building, mixed-finance housing under 24 CFR part 941 subpart F, or other types of low-income housing);

(iii) Units that have been legally vacated in accordance with the HOPE VI program, the regulations at 24 CFR part 971, or the mandatory conversion regulations at 24 CFR part 972, excluding developments where the PHA has consolidated vacancies;

(iv) Distressed units required to be converted to tenant-based assistance under section 33 of the 1937 Act (42 U.S.C. 1437z-5); or

(v) Disposition of non-dwelling properties, including administration and community buildings, and maintenance facilities.

(4) If the requirements of this section are not applicable, as provided in paragraph (b)(3) of this section, the PHA may proceed to submit to HUD its application under this part to dispose of the property, or a portion of the property, without affording an opportunity